# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Appeal No. 618 of 2000.**

**Date of Decision: 24.09.2007**

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State of H.P. Appellant.

Versus

Bansi Lal and others Respondents.

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Coram

**Hon'ble Mr. Justice Surinder Singh, J.**

**Whether approved for reporting[1]? No.**

**For the appellant : Sh.V K Verma, Additional Advocate General.**

**For respondent : Sh.Gulzar Rathore, Advocate.**

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**Surinder Singh, J** . (oral)

Respondents were put on trial, under Sections 147, 149, 323 and 506 of the Indian Penal Code and were acquitted by the learned Judicial Magistrate Ist Class, Chopal, District Shimla (H.P.) on 3.1.2000, against which the instant appeal has been filed on law and facts.

In brief the prosecution story is, that on 22.3.1997 at about 10 a.m. the respondents had beaten up the complainant Dhaju Ram, his brother Mangat Ram and his cousin Liaq Ram with *Dandas*, who sustained simple injuries. Both the parties are resident of the same village and admittedly there is a land dispute, over which the alleged incident had taken place. After completion of the investigation, challan was presented in the court for trial. The respondents were charge-

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

sheeted, under the aforesaid sections. They pleaded not guilty and claimed trial.

In order to prove their case, the prosecution examined the complainant Dhaju Ram (PW1), his brother Mangat Ram (PW2), son Liaq Ram (PW3) and the alleged eye witnesses Mehar Singh (PW4), Minju Ram (PW5), Bali Ram (PW6), Dalip Singh (PW7),Ram Chander (PW8) and Dr.Shyam Lal Chauhan (PW9).

After hearing the learned counsel for the parties and upon going through the evidence on record, the learned trial court acquitted the respondents. Now, the judgment of acquittal is under scrutiny in this appeal filed by the State.

I have heard Shri V.K.Verma, learned Additional Advocate General and Shri Gulzar Rathore, learned counsel for the respondents and have carefully reappraised the evidence on record.

The perusal of the findings in judgment of acquittal recorded by the learned trial court show that the trial court did not attach much importance to the statements of PWs on account of contradictions and embellishments and their doubtful conduct. On scanning the evidence of the prosecution legally, I have noticed certain regrettable features, which have caused dent in the prosecution case. Firstly, in the FIR, names of Sanniya, Shwanu Ram, Kumbia and Kashia s/o Behatu have been mentioned as accused persons but they were not made accused and there is no explanation given by the prosecution as to why they were not

impleaded as accused by the police. As far as statement of PW-1 is concerned, he has only named accused Bansi, Kirpa and Kansia but qua others he says that he did not remember their names. If they are resident of village *Dhabas* it is not understandable why the complainant was not knowing their names. Further, in his cross-examination, the complainant has admitted that the land bearing khasra No.315, over which the dispute had ensued, a civil suit is pending but the stay order was vacated by the civil court and the respondents had claimed this land to be their own, but neither the Investigating Officer had made any attempt nor the prosecution produced any evidence during the trial to whom Khasra No.315 belonged and as to who was in actual possession thereof. It is also admitted by PW2 Mangat Ram, cousin of PW-1, that regarding the same incident the respondents had also lodged a FIR against them and denied that the complainant party had given any beatings by *Dandas* to them. Mehar Singh (PW4), the alleged eye witness, did not support the case of the prosecution. Another alleged eye witness Manju Ram (PW5) had tried to corroborate the version of the complainant but in his cross-examination he has stated that on hearing the noise, they came out but at that time the respondents had left the place which means he did not know who was the aggressor. Bali Ram (PW6) has admitted in his cross-examination that no quarrel had taken place in his presence. The revenue record of the land in

dispute has neither been procured during the investigation of the case nor produced by the complainant.

Now in view of the above evidence two views are deducible, firstly that either there is a possibility that the complainant party was an aggressor or the incident in the facts and circumstances of the case has not taken place as projected by the prosecution. Thus no reliance can be put on the prosecution evidence to convict the respondents. Therefore, acquittal of the respondents is not perverse.

The appeal is accordingly dismissed.

The respondents are discharged of their bail bonds, entered upon by them at any stage of the proceedings of this case.

September 24, 2007 (Surinder Singh), J.
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